

**United States Department of Labor
Employees' Compensation Appeals Board**

DAVID W. BROWN, Appellant

and

**DEPARTMENT OF THE INTERIOR,
OFFICE OF THE INSPECTOR GENERAL,
Sacramento, CA, Employer**

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**Docket No. 04-618
Issued: June 7, 2004**

Appearances:

David W. Brown, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman

COLLEEN DUFFY KIKO, Member

DAVID S. GERSON, Alternate Member

JURISDICTION

On January 7, 2004 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated November 14, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board had jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a ratable hearing loss causally related to factors of his federal employment.

FACTUAL HISTORY

On February 6, 2003 appellant, then a 40-year-old special agent, filed a claim for hearing loss alleging that he was initially aware that his hearing loss was causally related to his federal employment on December 1, 1996. In a narrative dated June 26, 2003, appellant advised that he had been exposed to small arms and long gun firing, demolition and other loud noises in his federal employment.

On July 23, 2003 the Office referred appellant to Dr. Stuart Gherini, a Board-certified otolaryngologist, to determine his hearing loss and rate of impairment, if applicable. In a report dated August 20, 2003, Dr. Gherini stated that appellant had a bilateral moderately severe noise-induced high frequency sensorineural hearing loss causally related to his federal employment and bilateral tinnitus secondary to the sensorineural hearing loss. An audiogram was taken. Dr. Gherini stated that appellant did not have a ratable hearing impairment in either ear and that his hearing loss was not significant enough to warrant the use of hearing aids.

On September 16, 2003 the Office accepted appellant's conditions of bilateral sensorineural hearing loss and bilateral tinnitus as being causally related to his federal employment.

On October 4, 2003 the Office medical adviser, Dr. David N. Schindler, reviewed the case record. He further applied the Office's standardized procedures to the August 20, 2003 audiogram taken on behalf of Dr. Gherini and determined that appellant had no ratable hearing loss and that hearing aids were not indicated.

On October 20, 2003 appellant filed a Form CA-7, claim for compensation, for a schedule award.

By decision dated November 14, 2003, the Office denied appellant's claim for a schedule award on the basis that the medical evidence presented by Dr. Gherini and Dr. Schindler established no compensable impairment secondary to his industrial bilateral hearing loss condition.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

The Office evaluates permanent hearing loss in accordance with the standards contained in the A.M.A., *Guides* noted above using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps). The losses at each frequency are added up and averaged and a "fence" of 25 decibels (dB) is deducted because, as the A.M.A., *Guides* points

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ A.M.A., *Guides* pp. 246-50 (5th ed. 2000).

out, losses below 25 decibels result in no impairment in the ability to hear everyday sounds under everyday conditions. Each amount is then multiplied by 1.5. This would provide the percentage of hearing loss for each ear. To determine the percentage for a binaural hearing loss, the amount of the better ear is multiplied by 5 and added to the amount from the worse ear. The entire amount is then divided by 6 to arrive at the percentage of binaural hearing loss.⁴ The Board has concurred in the Office's adoption of this standard for evaluating hearing loss for schedule award purposes.⁵

ANALYSIS

In this case, the Office medical adviser applied the Office's standardized procedures to the August 20, 2003 audiogram. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed dBs losses of 5, 10, 30 and 55, respectively. These dBs were totaled at 100 and divided by 4 to obtain the average hearing loss of 25 decibels. The average loss was reduced by the 25 dBs fence to equal 0, which was multiplied by the established factor 1.5 to compute a 0 percent monaural loss for the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed losses of 5, 5, 15 and 55 dBs, respectively. These decibels were totaled at 80 and divided by 4 to obtain the average hearing loss of 20 dBs. The average loss was reduced by the 25dBs fence to equal 0, which was multiplied by the established factor 1.5 to compute a 0 percent monaural loss for the left ear. The Office medical adviser then multiplied the 0 percent losses in the left ear (the ear with the lesser loss) by 5, added it to the 0 percent loss in the right ear (the ear with the greater loss) and divided the sum by 6 which equaled 0. Accordingly, the Office medical adviser properly calculated appellant's hearing loss under Office standardized procedures to be a zero percent bilateral hearing loss.

On appeal, appellant contends that he should be entitled to compensation when his hearing decreases and hearing aids are required. The Board notes that, if at some later date a medical examination indicates that appellant's employment-related condition has worsened, a claim for an amended schedule award can be made to cover any employment-related additional impairment.⁶

CONCLUSION

The Board finds that appellant has not sustained a compensable hearing loss causally related to factors of his federal employment.

⁴ *Id.*

⁵ *Donald E. Stockstad*, 53 ECAB ____ (Docket No. 01-1570, issued January 23, 2002); *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

⁶ *Michael C. Norman*, 42 ECAB 768 (1991).

ORDER

IT IS HEREBY ORDERED THAT the November 14, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member